

APPENDIX 1

Competitive Carrier Group - Relevant Contract Provisions and Analysis

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
A.R.C. Networks Inc. d/b/a InfoHighway Communications Corp.	<p>In the event a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action. (§ 27.3)</p> <p>Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that Verizon is not required to furnish any service, facility or arrangement to provide any benefit required to be furnished or provided to [InfoHighway] hereunder, then Verizon may, subject to the restrictions set forth below, discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination. Verizon shall continue to provide the service,</p>	October 2, 2003 (TRO) March 11, 2005 (TRRO)	February 18, 2005

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	facility, arrangement, or benefit, ordered by [InfoHighway] as of the date of such decision, order, or determination, unchanged until the amendment to this Agreement has been approved by the Department. If the Parties are unable to agree on such amendment to this Agreement, then either Party may invoke the dispute resolution provision of section 28.9. (§ 27.4)		
Broadview Networks Inc. Broadview NP Acquisition Corp.	If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)	October 2, 2003 (TRO) March 11, 2005 (TRRO)	March 1, 2005
Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp.	If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, affects any provision of this Agreement, the rights or obligations of either Party hereunder,	October 2, 2003 (TRO) March 11, 2005 (TRRO)	

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	or the ability of a Party to perform any provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)		
DIECA Communications, Inc. d/b/a Covad Communications Company	If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)	10/02/03 (TRO); 03/11/2005 (TRRO)	03/04/2005
DSCI Corp.	If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to	October 2, 2003 (TRO) March 11, 2005 (TRRO)	February 18, 2005

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)		
IDT America Corp.	<p>In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by the statute or regulations embodied in this Agreement, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. (§ 8.2)</p> <p>In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [IDT] or [Verizon] to perform any material terms of this Agreement, [IDT] or [Verizon] may, on thirty (30) days written notice (delivered not</p>	October 2, 2003 (TRO) March 11, 2005 (TRRO)	February 28, 2005

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	later than thirty (30) days following the date on which such action has become legally binding or otherwise has become legally effective) require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. (§ 8.3)		
KMC Telecom V, Inc.	[I]n the event a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action. (§ 27.3)	October 2, 2003 (TRO) March 11, 2005 (TRRO)	March 30, 2005
Talk America Inc.	If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such	October 2, 2003 (TRO) March 11, 2005 (TRRO)	February 16, 2005

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. Either party may initiate such good faith negotiations in writing upon the issuance of any relevant decision, order, determination or action, or any change in Applicable Law. (§ 4.6)		
XO Massachusetts, Inc.	<p>In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by the statute or regulations embodied in this Agreement, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations and orders. (§ 8.2)</p> <p>In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [XO] or [Verizon] to perform any material terms of this Agreement, [XO] or [Verizon] may, on thirty (30) days written notice (delivered not</p>	October 2, 2003 (TRO) March 11, 2005 (TRRO)	February 18, 2005

CARRIER	RELEVANT CONTRACT PROVISIONS	CHANGE OF LAW EFFECTIVE DATE	CHANGE OF LAW NOTIFICATION DATE
	later than 30 days following the date on which such action has become legally binding or otherwise has become legally effective) require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. (§ 8.3)		

A.R.C. Networks Inc. d/b/a InfoHighway Communications Corporation (“InfoHighway”)

1. The interconnection agreement between A.R.C. Networks Inc. d/b/a InfoHighway Communications and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 27.3, requires that the parties negotiate in good faith an interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material term of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states:

In the event a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action. (§ 27.3)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, with a view toward executing an interconnection agreement amendment that properly incorporates changes to the FCC’s unbundling rules thereunder.

The Agreement, at § 27.4, also includes a provision that addresses specifically the parties’ obligations to negotiate, in good faith, a formal written amendment to the Agreement implementing any legal determination that Verizon no longer is obligated to provide any service, facility or arrangement made available by Verizon under the Agreement. Specifically, the Agreement states:

Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that Verizon is not required to furnish any service, facility or arrangement to provide any benefit required to be furnished or provided to [InfoHighway] hereunder, then Verizon may, subject to the restrictions set forth below, discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination. Verizon shall continue to provide the service, facility, arrangement, or benefit, ordered by [InfoHighway] as of the date of such decision, order, or determination, unchanged until the amendment to this Agreement has been approved by the Department. If the Parties are unable to agree on such amendment to this Agreement, then either Party may invoke the dispute resolution provision of section 28.9. (§ 27.4)

As an initial matter, InfoHighway does not agree that any determination made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order* eliminates Verizon's existing obligation to provide to InfoHighway certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated, under section 271 of the Act and other Applicable Law, to provide to InfoHighway the same network elements currently available under the Agreement. Moreover, even if Verizon were entitled, under federal and state law, to discontinue its provision of any network element currently available under the Agreement (and it is not), the above-referenced provision makes clear that Verizon must continue to provide the affected network element until such time as the parties' execute an appropriate interconnection agreement amendment, subject to approval by the Department.

2. The changes to the FCC's unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 27.3 of the Agreement. By letter dated February 18, 2005, InfoHighway provided formal written notice to Verizon that a "change of law" occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

Transferor, and Verizon Corporation, Transferee, For Consent to Transfer of Control, FCC CC Docket No. 98-184), Verizon shall provide performance measurement results ("Performance Measurement Results") to AT&T Broadband.

26.2.3 AT&T Broadband agrees that the information in the Performance Monitoring Reports and the information in the Performance Measurement Results is confidential and proprietary to Verizon, and shall be used by AT&T Broadband solely for internal performance assessment purposes, for purposes of joint AT&T Broadband and Verizon assessments of service performance, and for reporting to the Commission, the FCC, or courts of competent jurisdiction, under cover of an agreed-upon protective order, for the sole purpose of enforcing Verizon's obligations hereunder. AT&T Broadband shall not otherwise disclose this information to third parties.

27.0 COMPLIANCE WITH LAWS; REGULATORY APPROVAL

27.1 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

27.2 The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC as an integral part of Verizon's application pursuant to Section 271(d) of the Act.

27.3 In the event of a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action.

27.4 Notwithstanding anything herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that Verizon is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to AT&T Broadband hereunder, then Verizon may, subject to the restrictions set forth below, discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination. Verizon shall continue to provide the service, facility, arrangement, or benefit, ordered by AT&T Broadband as of the date of such decision, order, or determination, unchanged until the amendment to this Agreement has been approved by the Department. If the Parties are unable to agree on such an amendment to this Agreement, then either Party may invoke the dispute resolution provision of Section 28.9.

28.0 MISCELLANEOUS

InfoHighway™

February 18, 2005

VIA EMAIL AND OVERNIGHT MAIL

Jeffrey A. Masoner
Vice President
Interconnection Services Policy and Planning
600 Hidden Ridge
HQEWMNOTICES
P.O.Box 152092
Irving, TX 75038

Dear Mr. Masoner:

On February 4, 2005, the FCC released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-318 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreements ("ICAs") between A.R.C. Networks, Inc (dba/ InfoHighway) ("InfoHighway") and Verizon. Pursuant to the relevant sections of the Interconnection Agreements between our companies in each of the states, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICAs the FCC's determinations in the *Triennial Review Remand Order* and prior FCC unbundling orders.

Accordingly, we hereby provide this notice, and request that Verizon begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. Formal notice also is hereby being given for purposes of continuing negotiations on the rules adopted in the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on Verizon's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

InfoHighway notes that, pursuant to the relevant sections of the Interconnection Agreements between our companies in each of the states and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICAs continue in effect until such time as the Parties have executed a written amendment to those ICAs. As such, InfoHighway expects that both it and Verizon will continue to honor all terms and conditions of the current Interconnection Agreements until such time as a written amendment is executed.

The main company contact for these negotiations is:

InfoHighway Communications Corporation
175 Pinelawn Road, Suite 408, Melville, NY 11747 • (631) 249-1616 • Fax: (631) 815-1040

Peter Karoczkai
SVP, Sales and Marketing
1333 Broadway, Suite 1001
New York, NY 10018
(646) 536-6999
pkaroczkai@infohighway.com

Copies of all correspondence related to the parties' negotiations should be provided to:

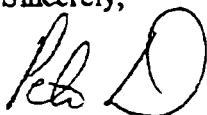
Genevieve Morelli
Brett H. Freedson
Kelley Drye & Warren LLP
1200 Nineteenth Street, NW
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)
gmorelli@kelleydrye.com
bfreedson@kelleydrye.com

Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process. On behalf of InfoHighway, the negotiations will be handled by InfoHighway's counsel at the law firm of Kelley Drye & Warren LLP.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, InfoHighway hereby requests that Verizon provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that Verizon claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Please feel free to contact the undersigned at (212) 566-2100 x. 6999 if you have any questions or require further information.

Sincerely,



Peter Karoczkai
SVP, Sales and Marketing

Cc: Anthony M. Black
Genevieve Morelli

Broadview Networks Inc. and Broadview NP Acquisition Corp. (together, “Broadview”)

1. The interconnection agreement between Broadview Networks Inc. and Broadview NP Acquisition Corp., and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 4.6, requires that the parties negotiate in good faith a written interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material provision of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states, in relevant part:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and execute a formal, written amendment that properly incorporates changes to the FCC’s unbundling rules thereunder. Broadview does not agree with Verizon’s previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon’s existing obligations to provide to Broadview certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to Broadview the same network elements currently available under the Agreement.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 4.6 of the Agreement. By letter dated March 1, 2005, Broadview provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

2. Term and Termination

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until May 8, 2005 (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either NEON or Verizon may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.
- 2.3 If either NEON or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either NEON or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between NEON and Verizon; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either NEON or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither NEON nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or Statement of Generally Available Terms (SGAT).

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Interconnection Attachment
Resale Attachment
Network Elements Attachment
Collocation Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws rules. All

disputes relating to this Agreement shall be resolved through the application of such laws.

- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to NEON hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and NEON shall reimburse Verizon for any payment previously made by Verizon to NEON that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to NEON of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

5. Assignment



Making Connections That Make a Difference

115 Stevens Avenue
Third Floor
Valhalla, NY 10595
914 742 5555
fax 914 742 5812

March 1, 2005

Via Overnight Courier

Jeffrey A. Masoner
Vice President - Interconnection Services Policy & Planning Wholesale Markets
Verizon
600 Hidden Ridge
HQEWMNOTICES
P.O. Box 152092
Irving, Texas 75038

Re: Notice of FCC Action Regarding Unbundled Network Elements
Interconnection Agreements between Verizon and Broadview
Networks, Inc. for the States/Commonwealths of Connecticut,
Massachusetts, New Jersey, New Hampshire, New York, Pennsylvania
and Rhode Island

Dear Mr. Masoner:

Broadview Network Plus Acquisition Corp. ("Broadview") is in receipt of your letter dated February 10, 2005, notifying it of Verizon's intention to cease accepting "orders for completion on or after March 11, 2005 if such orders are for new facilities or arrangements that are Discontinued Facilities," which you identify as "DS0 Mass Market Local Circuit Switching" and "UNE Platform combinations comprised of Mass Market Local Circuit Switching and UNE Loops, or Shared Transport, Call-Related Databases, or Signaling Networks used in connection with DS0 Mass Market Local Circuit Switching," as well as "DS1 Loops," "DS3 Loops" and "Dark Fiber Loops" at certain locations and "Dedicated DS1 Transport," "Dedicated DS3 Transport," and "Dark Fiber Transport" on certain routes. You predicate such notice on the "Order on Remand" issued by the Federal Communications Commission ("FCC") in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers in WC Docket No 04-313 and CC Docket No. 01-338* on February 4, 2005 ("Triennial Review Remand Order"). The rules adopted by the FCC in its *Triennial Review Remand Order* constitute a change in law under Broadview's interconnection agreements with Verizon

Jeffrey A. Masoner
March 1, 2005
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for the States/Commonwealths of Connecticut, Massachusetts, New Jersey, New Hampshire, New York, Pennsylvania and Rhode Island ("Broadview ICAs").

Please be advised that Broadview's ICAs require that Verizon make available to Broadview on an unbundled basis at total element long run incremental cost ("TELRIC") compliant rates all of the network elements, as well as the combinations thereof, that you have identified as Discontinued Facilities. Broadview's ICAs further require that the parties negotiate in good faith with the intent of amending the agreements to effectuate any and all changes in law and/or engage in dispute resolution to resolve any disputes involving the interpretation or enforcement of the agreements.

Broadview hereby formally requests that Verizon begin good-faith negotiations under Section 252 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("Federal Communications Act"), to reach mutually agreeable amendments to the Broadview ICAs that will fully and properly implement the changes in law occasioned by the FCC's *Triennial Review Remand Order*, as well as the rules earlier adopted in the "Report and Order" issued by the FCC in CC Docket No. 01-338 that were unaffected by the *Triennial Review Remand Order*. Broadview intends that such negotiations will encompass Verizon's ongoing obligations under Section 271 of the Federal Communications Act to provide Broadview with access to certain unbundled network elements, as well as independent federal and state network unbundling obligations to which Verizon is subject.

Please note that Broadview's ICAs do not permit Verizon to unilaterally implement changes in law. Moreover, the FCC has mandated that carriers implement changes in law occasioned by its *Triennial Review Remand Order* "as directed by section 252 of the [Federal Communications] Act," reminding both "incumbent LEC[s] and competitive LEC[s] [that they] must negotiate in good faith regarding any rates, terms, and conditions necessary to implement our rule changes," and that any failure "to negotiate in good faith under Section 251(c)(1) of the [Federal Communications] Act and . . . [the FCC's] implementing rules may subject . . . [a] party to enforcement action." Finally, Verizon remains obligated under "Applicable Law" as defined by the Broadview ICAs, which includes conditions to which Verizon's predecessors acquiesced in order to secure federal and state approval of their entry into the in-region, interLATA market and the merger of Bell Atlantic Corporation and GTB Corporation. As such, Broadview expects that Verizon will continue to honor all terms and conditions of the Broadview ICAs, including those that require Verizon to provide Broadview with unbundled access at TELRIC-compliant rates to those network elements that you have characterized as "Discontinued Facilities."

Jeffrey A. Masoner
March 1, 2005
Page 3.

Should Verizon disagree with Broadview's interpretation of the Broadview ICAs, Broadview hereby formally invokes the dispute resolution procedures set forth therein so as to promptly address and resolve such disagreement.

Finally, in order to facilitate negotiation of amendments implementing the changes in law occasioned by the FCC's *Triennial Review Remand Order*, Broadview requests that Verizon provide it with the data and materials necessary for Broadview to verify the number of lines and fiber-based collocators at each of the wire centers in its operating territory that Verizon believes satisfy the criteria for delisting as unbundled network elements dedicated and dark fiber transport on certain routes and high capacity and dark fiber loops at certain locations. Such data and materials should include, at a minimum, the data referenced in the February 18, 2005 letter filed by Verizon in WC Docket No. 04-313, as well as any other data and materials relied upon by Verizon in compiling the list of wire centers set forth in that filing. Broadview will of course agree to keep all such data confidential.

To initiate either negotiations or dispute resolution, please contact the undersigned at your earliest convenience.

Sincerely,



Charles C. Hunter
Executive Vice President and General Counsel
Broadview Network Plus Acquisition Corp.
115 Stevens Avenue, Third Floor
Valhalla, New York 10595
Telephone: (914) 468-8214
Facsimile: (914) 742-5818

Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp. ("Cleartel")

1. The interconnection agreement between Cleartel Telecommunications, Inc. f/k/a Essex Acquisition Corp. and Verizon for the Commonwealth of Massachusetts (the "Agreement"), at § 4.6, requires that the parties negotiate in good faith a written interconnection agreement amendment to implement any changes in Applicable Law that affect any provision of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, affects any provision of this Agreement, the rights or obligations of either Party hereunder, or the ability of a Party to perform any provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)

Under the Agreement, the changes to the FCC's unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties' agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and execute a formal, written amendment that properly incorporates changes to the FCC's unbundling rules thereunder. Cleartel does not agree with Verizon's previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon's existing obligations to provide to Cleartel certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to Cleartel the same network elements currently available under the Agreement.

2. The changes to the FCC's unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 4.6 of the Agreement. Cleartel has provided notice to Verizon that a "change of law" has occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between SBCT and Verizon; or, (b) the date one (1) year after the proposed date of termination; provided, however, by mutual agreement the Parties may extend the term of the agreement should negotiations for a new interconnection agreement extend beyond one (1) year after the proposed date of termination.

- 2.4 If either SBCT or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither SBCT nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or SGAT.

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Interconnection Attachment
Resale Attachment
UNE Attachment
Collocation Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law (including, but not limited to, any applicable non-discrimination obligations) in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall

be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, affects any provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, a Party is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to the other Party hereunder, then the affected Party may discontinue the provision of any such Service, payment or benefit. Verizon will provide thirty (30) days prior written notice to SBCT of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service, in which event such specified period and/or conditions shall apply.

5. Assignment

SBCT may not assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of Verizon, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, SBCT shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if SBCT (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to SBCT by Verizon as required by Section 9 of this Agreement, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 6.3 Unless otherwise agreed by the Parties, the assurance of payment shall, at Verizon's option, consist of (a) a cash security deposit in U.S. dollars held by

DIECA Communications, Inc. d/b/a Covad Communications Company (“Covad”)

1. The interconnection agreement between DIECA Communications, Inc. d/b/a Covad Communications Company and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 4.6, requires that the parties negotiate in good faith a written interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material provision of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states, in relevant part:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and execute a formal, written amendment that properly incorporates changes to the FCC’s unbundling rules thereunder. Covad does not agree with Verizon’s previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon’s existing obligations to provide to Covad certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to Covad the same network elements currently available under the Agreement.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 4.6 of the Agreement. By letter dated March 4, 2005, Covad provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

providing written notice of termination at least ninety (90) days in advance or the date of termination.

- 2.3 If either NUI or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either NUI or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between NUI and Verizon; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either NUI or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither NUI nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or Statement of Generally Available Terms (SGAT).

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Interconnection Attachment
Resale Attachment
Network Elements Attachment
Collocation Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State of Maryland, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision;

provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to NUI hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and NUI shall reimburse Verizon for any payment previously made by Verizon to NUI that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to NUI of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

5. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, NUI shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if NUI (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to NUI by Verizon, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency,



Hamilton Square 600 14th Street NW Suite 750 Washington DC 20005
T> 202-220-0400 F > 202-220-0401

March 4, 2005

Via Overnight Delivery and Facsimile

Jeffrey A. Masoner
Vice President Interconnection Services
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, Texas 75038

Re: Triennial Review Remand Order Change of Law Negotiations

Dear Mr. Masoner:

Covad Communications Company and DIECA Communications Inc. (collectively, "Covad") are writing this letter, related to a number of states,¹ in response to the Federal Communications Commission's ("FCC") Triennial Review Remand Order ("TRRO"). As you know, the FCC's TRRO becomes effective on March 11, 2005. Unfortunately, Verizon's various communications concerning the significance of this date to Covad's right to place orders in certain Central Offices ("COs") for DS-1 loops and dedicated transport have not been entirely clear. We want to take this opportunity to respond to your TRRO letters dated February 10, 2005 and March 2, 2005, to clarify Covad's contractual rights, and to continue the negotiation process necessary to implement appropriate changes to the Verizon-Covad Interconnection Agreements ("IAs") arising from the TRRO. As the TRRO contemplates, Covad is committed to moving this process forward expeditiously.

The Verizon-Covad IAs contain change-of-law clauses specifically designed to create an orderly process for the negotiation of modifications to the IAs made necessary

¹ This letter covers the following states: California, Connecticut, Delaware, the District of Columbia, Florida, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania (regions formerly Bell Atlantic and GTE), Rhode Island, Texas, Virginia (regions formerly Bell Atlantic and GTE), and Washington.

Jeffrey Masoner
March 4, 2005
Verizon
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when the laws and regulations governing our relationship have changed. The TRRO rule changes affecting the availability of high cap loops and interoffice transport take effect on March 11, thus triggering the procedures provided for in the change-of-law clauses as of that date.

Despite clear contractual change of law provisions, and the equally clear language in Paragraph 233 of the TRRO— your February 10, 2005 and March 2, 2005 letters suggest that Verizon intends to unilaterally implement changes in ordering processes and/or changes in the availability of UNEs as of the March 11 date. Any such unilateral implementation of changes in ordering processes and/or the availability of UNEs would constitute a clear breach of our IAs. While we hope that Verizon intends to honor its contractual obligations, Covad will take all actions necessary to enforce its contractual rights in the event of unilateral action.

Given the extremely short time period prior to March 11, we ask that Verizon confirm in writing by March 8, 2005 that

- 1) No changes in ordering processes will be implemented on March 11, 2005, including without limitation, any requirement of a self certification as described in Paragraph 234 of the TRRO, and that all such changes in ordering processes shall be implemented only at such time as the change of law process described in the Verizon-Covad IAs has resulted in appropriate amendments to the IAs, and
- 2) No changes in the availability of UNEs affected by the TRRO will be implemented on March 11, 2005, and that all such changes in availability of UNEs affected by the TRRO ordering processes shall be implemented only at such time the change of law process described in the Verizon-Covad IAs have resulted in appropriate amendments to the IA.

This letter shall also constitute written notice that Covad is not required to provide any self certification contemplated by Paragraph 234 of the TRRO commencing March 11, 2005, and shall only be required to provide such a self certification following amendment of the IAs. In the event that Verizon unilaterally requires any form of self certification as of March 11, 2005, Covad shall supply such self certification based on its continued entitlement to access to UNEs under its IAs pending completion of change of law amendments, irrespective of the form of self certification unilaterally specified by Verizon. Such self certification shall be without prejudice to any of Covad's contractual rights. Covad will consider any rejection of orders based upon unilateral self certification or other order processing requirements to be clear and willful breaches of the IA, and shall seek damages for any lost orders, harm to customer relationships or other adverse consequences.

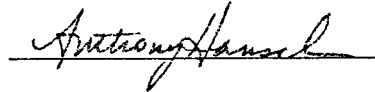
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In the event that Verizon intends to require any form of self certification or other changes in ordering processes, notwithstanding Covad's contractual right to a continuation of existing ordering processes pursuant to the IA, we request that Verizon specify any such changes in writing by March 8, 2005. Any changes to the ordering process by Verizon must follow the proper procedures, such as Change Management, prior to being implemented by Verizon.

With respect to any self certification requirements that may be the subject of change of law negotiations, we note that on February 18, 2005, Verizon published a list of COs where it believes certain network elements have been "delisted" as UNEs under §§251 and 252 of the Telecommunications Act of 1996. In order to conduct a reasonably diligent inquiry into the appropriateness of this list in light of the guidelines and definitions set out in the TRRO, we have asked our account team to provide us with the information described in the Enclosure. This information is solely in the possession of Verizon. To date we have not received the information, but we are hopeful that you will provide it to us expeditiously so that we can consider this information in our change-of-law negotiations. With regard to these negotiations, we are preparing a template containing the language necessary to implement the TRRO. We will forward this to you next week.

Thank you for your prompt attention to these important matters. Please do not hesitate to contact me with any questions that you might have.

Sincerely yours,



Anthony Hansel
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Covad Communications Company
600 14th Street, N.W., Suite 750
Washington, DC 20005
Tel: (202) 220-0410
Fax: (202) 220-0401
thansel@covad.com

cc: State Commissions
Anthony M. Black
contract.management@verizon.com

Enclosure

On February 18, 2005, Verizon submitted a CLLI code list to the Federal Communications Commission (FCC) identifying Central Offices (COs) that Verizon asserts meet certain criteria set out in the Triennial Review Remand Order (TRRO). In order to assist Covad in conducting a reasonably diligent inquiry into these COs as described in Paragraph 234 of the TRRO, please provide Covad with the following information regarding the methodologies used to create the list. All of the information requested below is solely in the control of Verizon and cannot be obtained by Covad without Verizon's assistance.

I. Business Lines

1. Please provide a breakdown of the total number of business access lines Verizon reported for each wire center, by wire center CLLI code, according to the following categories: business analog switched access lines counted under ARMIS 43-08, business digital switched access line equivalents counted under ARMIS 43-08, business Centrex extensions counted under ARMIS 43-08, Centrex trunks counted under ARMIS 43-08, PBX trunks counted under ARMIS 43-08, business UNE DS0, DS1 and DS3 loops not in combination with other network elements, and business UNE DS0, DS1 and DS3 loops provided in combination with other network elements.
2. Please describe, in reasonable detail, the criteria applied to determine which lines were appropriate to include as business lines on the list provided to the FCC on February 18, 2005. Additionally, please supply the following information with respect to the criteria identified:
 - A. The source of the data or information used to determine whether a particular business line fulfilled the applicable criteria.
 - B. When the data or information used to determine whether a particular business line fulfilled the applicable criteria was gathered.
3. Please identify any criteria applied to determine which lines were appropriate to include as business lines on the CLLI list provided to the FCC on February 18, 2005 that were different from the criteria used to create the list Verizon provided to the FCC on December 7, 2004.
4. If applicable given the information requested above, what steps did Verizon take to confirm that high-capacity facilities (or some portion of high-capacity facilities) included in the business access line counts were used to provide switched-access services?
5. Were any dedicated or shared transport facilities counted as business lines?
 - A. If so, why?

- B. If so, please identify each wire center, by CLLI code, for which dedicated or shared transport facilities were counted as business lines and the number of business lines counted as a result.
6. Were any lines connecting Verizon facilities to Internet Service Providers counted as business lines?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which lines connecting Verizon facilities to Internet Service Providers were counted as business lines and the number of business lines counted as a result.
7. Were any UNE loops ordered by Covad counted as business lines?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which UNE loops ordered by Covad were counted as business lines and the number of business lines counted as a result.
8. Were any lines serving your subsidiaries or affiliates counted as business lines?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which lines serving your subsidiaries or affiliates counted as business lines and the number of business lines counted as a result.
9. Were any data loops (e.g. xDSL-capable loops, T-1 loops, etc.) or portions of data loops not providing switched services counted as business lines?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which data loops or portions of data loops not providing switched services were counted as business lines and the number of business lines counted as a result.
10. If not covered by the information Verizon provided in response to Question 8, was bandwidth on channelized high capacity loops that was not being used for voice service counted as business lines?
- A. If so, why?

- B. If so, please identify each wire center, by CLLI code, for which bandwidth on channelized high capacity loops that was not being used for voice services was counted as business lines and the number of business lines counted as a result.
11. In situations where Verizon counted high capacity loops as business lines, did Verizon “round up” or down when calculating 64 Kbps equivalents for high capacity loops where the loop speed was not divisible by 64 (i.e. is a 144 Kbps line providing switched access services counted as two business lines or three)?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which “rounded-up” lines were counted as business lines and the number of business lines counted as a result.
12. To the extent that it is possible for Verizon to identify this information, were any lines used to provide voice services using Voice-over-Internet-Protocol (VoIP) services counted as business lines?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which lines used to provide voice services using VoIP were counted as business lines and the number of business lines counted as a result.
13. When calculating data speeds for purposes of determining 64 Kbps equivalents, what speed did Verizon use for this calculation on lines with asymmetrical upstream and downstream speeds; the slower speed, the higher speed, the upstream speed, or the downstream speed? If your answer depends on the type of line, please explain what speed was used for each type of line and why.
14. When calculating the total number of business access lines, how did Verizon differentiate a residential line from a business line?
15. When calculating the total number of business access lines, did Verizon count each Centrex extension as a full business line?
- A. If so, why?
- B. If so, please identify each wire center, by CLLI code, for which Centrex extensions were counted as full business lines and the number of business lines counted as a result.

II. Fiber Collocators

1. Please list, by CLLI code, how many fiber collocators Verizon identified in each wire center listed on your submission to the FCC on February 18, 2005.
2. Please indicate what steps Verizon took to confirm that fiber collocators Verizon counted were actively operating facilities in a particular CO.
3. If applicable, please identify how many of these fiber collocators were added in each wire center since your December 7, 2004 *ex parte* filing at the FCC. Please organize your answer by CLLI code and explain the basis for adding each such new fiber collocator.
4. If applicable, please identify how many fiber collocators were removed from the list in each wire center since your December 7, 2004 *ex parte* filing at the FCC. Please organize your answer by CLLI code and identify your basis for removing each fiber collocator that is no longer being counted.
5. Please describe in reasonable detail the criteria Verizon used to determine which fiber collocators were appropriate to include in the count that Verizon used to compile the CLLI code list Verizon submitted to the FCC on February 18, 2005. Additionally, please supply the following information with respect to the criteria Verizon identify
 - A. The source of the data or information used to determine whether a particular collocator fulfilled the applicable criteria.
 - B. When the data or information used to determine whether a particular collocator fulfilled the applicable criteria was gathered.
6. In the event that a single fiber collocator leases its fiber facilities to one or more other collocators in the same wire center, did Verizon identify one fiber collocator or multiple fiber collocators in that wire center?
 - A. If Verizon identified multiple fiber collocators where one fiber collocator leases fiber facilities to one or more other collocators in the same wire center, please identify for each wire center, by CLLI code, the number of fiber collocators leasing fiber from another carrier that Verizon counted as a separate fiber collocator.
 - B. If Verizon identified multiple fiber collocators where one fiber collocator leases fiber facilities to one or more other collocators in the same wire center, please identify for each wire center what steps, if any, Verizon took to verify that the lessor(s) obtained leased fiber on an indefeasible right of use basis?

7. Did Verizon include fiber-based collocators using “comparable transmission facilities” (non-fiber-based collocator)?
 - A. If so, please describe in reasonable detail the criteria Verizon used to determine if a collocator was using “comparable transmission facilities” and the kinds of facilities Verizon determined to be “comparable transmission facilities.”
 - B. If so, please list, by CLLI code, the number of non-fiber-based collocators Verizon included in the list Verizon submitted to the FCC on February 18, 2005, the type of transmission medium used by each non-fiber-based collocator identified.

III. Tier 1 Tandem Offices

1. Identify by CLLI code any wire centers counted as Tier 1 wire centers that are tandem switching locations without line-side switching capability that serve as a point of traffic aggregation accessible by competitive LECs.

DSCI Corp. (“DSCI”)

1. The interconnection agreement between DSCI Corp. and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 4.6, requires that the parties negotiate in good faith a written interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material provision of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states, in relevant part:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. (§ 4.6)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and execute a formal, written amendment that properly incorporates changes to the FCC’s unbundling rules thereunder. DSCI does not agree with Verizon’s previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon’s existing obligations to provide to DSCI certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to DSCI the same network elements currently available under the Agreement.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 4.6 of the Agreement. By letter dated February 18, 2005, DSCI provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.

- 2.3 If either BullsEye or Verizon provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either BullsEye or Verizon has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between BullsEye and Verizon; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either BullsEye or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither BullsEye nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or Statement of Generally Available Terms (SGAT).

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Interconnection Attachment
Resale Attachment
Network Elements Attachment
Collocation Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render

unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to BullsEye hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and BullsEye shall reimburse Verizon for any payment previously made by Verizon to BullsEye that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to BullsEye of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

5. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, BullsEye shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if BullsEye (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to BullsEye by Verizon, or (d) admits its inability to pay its debts as such debts

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

FACSIMILE

(202) 955-9792

www.kelleydrye.com

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TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM

AFFILIATE OFFICES
JAKARTA, INDONESIA
MUMBAI, INDIA

DIRECT LINE: (202) 887-1230

EMAIL: gmorelli@kelleydrye.com

February 18, 2005

FILE COPY

VIA E-MAIL AND OVERNIGHT DELIVERY

Mr. Jeffrey A. Masoner
Vice President – Interconnection Services and Policy Planning
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, Texas 75038

**Re: Notice of Change in Law and Request for Interconnection Amendment
Negotiations**

Dear Mr. Masoner:

On February 4, 2005, the FCC released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 (“*Triennial Review Remand Order*”). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreements between DSCI Corporation (“DSCI”) and Verizon for the following states: Maine, Massachusetts,¹ New Hampshire, New York, Rhode Island and Vermont (the “Agreements”). Pursuant to the Agreements, formal written notice is required to enter into negotiations for an amendment to the Agreements to implement the FCC’s determinations in the *Triennial Review Remand Order* and prior FCC unbundling orders.

Accordingly, pursuant to the applicable change in law provisions set forth in the Agreements, DSCI hereby submits this notice and requests that Verizon begin good-faith negotiations, under Section 252 of the 1996 Telecom Act, to reach a mutually agreeable

¹ DSCI currently is a party to the consolidated arbitration proceeding before the Massachusetts Department of Telecommunications and Energy (D.T.E. 04-33) for an amendment to its interconnection agreement with Verizon for the Commonwealth of Massachusetts.

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Mr. Jeffrey A. Masoner
Verizon Wholesale Markets
February 18, 2005
Page Two

amendment to the Agreements that fully and properly implements the changes in law that have occurred as a result of the *Triennial Review Remand Order*. Formal notice also is hereby being given for purposes of continuing negotiations on the rules adopted in the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*. DSCI intends that the negotiations will include the effect of section 271 of the 1996 Telecom Act, where applicable, on Verizon's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

DSCI notes that, pursuant to the Agreements and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the Agreements continue in effect until such time as the Agreements are formally amended by the parties. As such, DSCI expects that both it and Verizon will continue to honor all terms and conditions of the Agreements until such time as the parties execute a written amendment to the Agreements.

DSCI's main contact for these negotiations is:

Sean Dandley, President/CEO
DSCI CORPORATION
1050 Waltham Street
Lexington, MA 02421
(781) 861-4603 (telephone)
(781) 862-4545 (facsimile)
sdandley@dscicorp.com

Copies of all correspondence related to parties' negotiations should be provided to:

Genevieve Morelli, Esq.
Brett Heather Freedson, Esq.
KELLEY DRYE & WARREN LLP
1200 Nineteen Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)
gmorelli@kelleydrye.com
bfreedson@kelleydrye.com

KELLEY DRYE & WARREN LLP

Mr. Jeffrey A. Masoner
Verizon Wholesale Markets
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Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process. On behalf of DSCI, the negotiations will be handled by DSCI's counsel at the law firm of Kelley Drye & Warren LLP.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised Agreements, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, DSCI hereby requests that Verizon provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators, by end office, for each end office that Verizon claims fall within each tier, as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided no later than Friday, February 25, 2005.

Please feel free to contact the undersigned counsel at (202) 887-1230 if you have any questions or require further information.

Sincerely,

Handwritten signature of Genevieve Morelli in black ink, followed by the initials BHF.

Genevieve Morelli
Counsel to DSCI Corporation

cc: Anthony M. Black
Sean Dandley

IDT America Corp. (“IDT America”)

1. The interconnection agreement between IDT America Corp. and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 8.3, requires that the parties renegotiate, in good faith, mutually acceptable new terms and conditions, as necessary to implement an effective legislative, regulatory, judicial or other legal action that materially affects any material term of the Agreement. Specifically, the Agreement states:

In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [IDT] or [Verizon] to perform any material terms of this Agreement, [IDT] or [Verizon] may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or otherwise has become legally effective) require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. (§ 8.3)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* each constitute a “regulatory action” that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate, in good faith, the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and settle upon mutually acceptable new terms and conditions that properly incorporate changes to the FCC’s unbundling rules thereunder.

The Agreement, at § 8.2, also includes a provision that addresses specifically the parties’ obligations to negotiate, in good faith, substitute contract provisions that conform to FCC rules, regulations or orders that “materially reduce or alter” the network elements and services that Verizon is obligated to provide under applicable statutes and regulations, including the Act or the FCC’s rules. Specifically, the Agreement states, in relevant part:

In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by the statute or regulations embodied in this Agreement, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. (§ 8.2)

As an initial matter, IDT America does not agree that any determination made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order* eliminates Verizon’s existing obligation to provide to IDT America certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated, under section 271 of the Act and other Applicable

Law, to provide to IDT America the same network elements currently available under the Agreement. Moreover, even if Verizon were entitled, under federal law, to discontinue its provision of any network element currently available under the Agreement (and it is not), the above-referenced provision makes clear that Verizon must negotiate, in good faith, “substitute contract terms” that reduce or alter Verizon’s existing unbundling obligations, in accordance with federal law.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute legally effective actions, under §§ 8.2 and 8.3 of the Agreement, for which renegotiated or substitute contract provisions are required. By letter dated February 28, 2005, IDT America provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

SECTION 7 CHARGES AND PAYMENT

7.1 In consideration of the services provided by a Party under this Agreement, the other Party shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by a Party hereunder, including disputed amounts, are set forth in Attachment VIII.

SECTION 8 REGULATORY APPROVAL

8.1 This Agreement, and any amendment or modification hereof, will be submitted to the Department for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

8.2 In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 16 (Dispute Resolution Procedures) hereof.

8.3 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCI or BA to perform any material terms of this Agreement, MCI or BA may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

8.4 The Parties intend that any additional services requested by either Party relating to the subject matter of this Agreement that are not offered hereunder will be incorporated into this Agreement by amendment upon agreement by the Parties.

8.5 The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC. Subject to the Parties' rights to challenge the Agreement as permitted by applicable law, the Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of

the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Department or the FCC under Section 252 of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Department or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s); provided that such rejected portion(s) shall not affect the validity of the remainder of this Agreement.

8.6 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Department. Any or all of the terms of this Agreement may be altered or abrogated by a successful challenge to the Agreement (or to the order approving the Agreement) as permitted by applicable law. By signing this Agreement, the Parties do not waive their right to pursue such a challenge.

SECTION 9 INDEMNIFICATION

9.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees (collectively, a "Loss") incurred by the indemnified Party to the extent that such Loss is: (a) suffered, made, instituted, or asserted by any other person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent legally caused by the acts or omissions of the indemnifying Party, regardless of the form of action; or (b) suffered, made, instituted, or asserted by the indemnifying Party's own customer(s) against the indemnified Party arising out of the indemnified Party's provision of services to the indemnifying Party under this Agreement, except to the extent the Loss arises from a breach of this Agreement by the indemnified Party. Notwithstanding the foregoing indemnification, nothing in this Section 9 shall affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws.

9.2 The indemnification provided herein shall be conditioned upon:

9.2.1 The indemnified Party shall promptly notify the indemnifying Party of any action taken against the indemnified Party relating to the indemnification, provided that failure to notify the indemnifying Party shall not relieve it of any liability it might otherwise have under this Section 9 to the extent it was not materially prejudiced by such failure of notification.

9.2.2 The indemnifying Party shall have sole authority to defend any such



IDT America, Corp.
520 Broad Street
Newark, New Jersey 07102

February 28, 2005

VIA OVERNIGHT MAIL & EMAIL <wmnotices@version.com>

Mr. Jeffrey A. Masoner
Vice President - Interconnection Services and Policy Planning
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, Texas 75038

Re: **IDT AMERICA, CORP. AND IDT AMERICA OF VIRGINIA, LLC:**

**NOTICE TO COMMENCE NEGOTIATION OF AN AMENDMENT TO
IMPLEMENT TRIENNIAL REVIEW REMAND ORDER; THIS NOTICE
APPLIES TO ALL VERIZON JURISDICTIONS, INCLUDING BUT NOT
LIMITED TO: CA, DE, DC, FL, ME, MD, NV, NH, NJ, NY, NC, OR, PA,
RI, SC, TX, VT, VA, WA, AND WV**

Dear Mr. Masoner:

IDA America of Virginia, LLC, ("IDT-VA") and IDT America, Corp. ("IDTA") (collectively hereafter "IDT") hereby request that Verizon begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable interconnection agreement ("ICA") amendment that fully and properly implements the changes that have occurred as a result of the *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("Triennial Review Remand Order"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under all current ICAs between IDT and Verizon. Formal written notice is required under all IDT ICAs to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order* and prior FCC unbundling orders.¹ **THIS NOTICE APPLIES TO ALL VERIZON**

¹ On February 17 and 18, 2005, we received numerous notices from you regarding the FCC's Triennial Review Remand Order and the availability of UNEs thereunder as of March 11, 2005. Two such notices are addressed to IDT-VA and, presumably, such notices apply to ICAs in Virginia. The other notices are addressed to IDTA and do not specify an ICA. Some of these notices acknowledge that formal amendments may have to be entered into prior to modifying an ICA, and some imply that a mere notice is sufficient to modify an ICA. It is not possible to determine which notice applies to which IDT ICA.

JURISDICTIONS, INCLUDING BUT NOT LIMITED TO CA, DE, DC, FL, ME, MD, NV, NH, NJ, NY, NC, OR, PA, RI, SC, TX, VT, VA, WA, AND WV.

Formal notice also is hereby being given for purposes of commencing negotiations on the rules adopted in the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*. We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on Verizon's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

IDT notes that, pursuant to its current ICAs and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the parties have executed a written amendment to the ICA. As such, IDT expects that you will continue to honor all terms and conditions of the current ICAs until such time as a written amendment is executed.

The main company contact for these negotiations is:

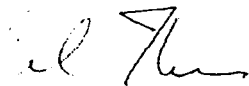
Mr. David Lucky
IDT America, Corp.
520 Broad Street
Newark, NJ 07102
Tel: (973) 438-3891
dlucky@corp.idt.net

with a copy to:

Andrew Fisher, Esq.
IDT America, Corp.
520 Broad Street
Newark, NJ 07102
Tel: (973) 438-3683
andrew.fisher@corp.idt.net

The law firm of Kelley Drye & Warren LLP will be negotiating on IDT's behalf. Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Sincerely,



Andrew Fisher

c: Anthony M. Black, VZ (via overnight mail)

KMC Telecom V, Inc. (“KMC”)

1. The interconnection agreement between KMC Telecom V, Inc. (“KMC”) and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 27.3, requires that the parties negotiate in good faith an interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material term of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states, in relevant part:

[I]n the event a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action. (§ 27.3)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, with a view toward executing an interconnection agreement amendment that properly incorporates changes to the FCC’s unbundling rules thereunder. KMC does not agree with Verizon’s previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon’s existing obligations to provide to KMC certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to KMC the same network elements currently available under the Agreement.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 27.3 of the Agreement. By letter dated March 30, 2005, KMC provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

enforcing BA's obligations hereunder. Level 3 shall not otherwise disclose this information to third parties.

27.0 COMPLIANCE WITH LAWS; REGULATORY APPROVAL

27.1 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement. Each Party shall promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

27.2 The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC as an integral part of BA's application pursuant to Section 271(d) of the Act. In the event that any one or more of the provisions contained herein in BA's reasonable determination is likely to adversely affect BA's application pursuant to Section 271(d) of the Act, the Parties agree to make only the minimum revisions necessary to eliminate the inconsistency or amend the application-affecting provision(s).

27.3 Except as explicitly provided in Sections 4.2.4, 5.7 and 22 of this Agreement, in the event of a change in Applicable Law that materially affects any material term of this Agreement, the rights or obligations of either Party hereunder, or the ability of either Party to perform any material provision hereof, the Parties shall renegotiate in good faith such affected provisions with a view toward agreeing to acceptable new terms as may be required or permitted as a result of such legislative, regulatory, judicial or other legal action.

27.4 Except as explicitly provided in Sections 4.2.4, 5.7 and 22 of this Agreement, notwithstanding anything else herein to the contrary, if, as a result of any decision, order or determination of any judicial or regulatory authority with jurisdiction over the subject matter hereof, it is determined that BA is not required to furnish any service, facility or arrangement, or to provide any benefit required to be furnished or provided to Level 3 hereunder, then BA may discontinue the provision of any such service, facility, arrangement or benefit to the extent permitted by any such decision, order or determination by providing ninety (90) days prior written notice to Level 3, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff or Applicable Law) for termination of such service, in which event such specified period and/or conditions shall apply.

28.0 MISCELLANEOUS

28.1 Authorization

28.1.1 BA is a corporation duly organized, validly existing and in good standing under the laws of the State of Massachusetts and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

March 30, 2005

VIA EMAIL AND OVERNIGHT DELIVERY

Mr. Jeffrey A. Masoner
Vice President – Interconnection Services and Policy Planning
Verizon Wholesale Markets
600 Hidden Ridge
HQEWMNOTICES
Irving, Texas 75038

**Re: Notice of Change in Law and Request for Interconnection Amendment
Negotiations**

Dear Mr. Masoner:

On February 4, 2005, the FCC released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreements between KMC Telecom III LLC, KMC Telecom V, Inc. and KMC Data LLC (collectively, "KMC") and the Verizon telephone companies ("Verizon"), for all states (the "Agreements"). Pursuant to the Agreements, formal written notice is required to enter into negotiations for an amendment to the Agreements to implement the FCC's determinations in the *Triennial Review Remand Order* and prior FCC unbundling orders.

Accordingly, pursuant to the applicable change in law provisions set forth in the Agreements, KMC hereby submits this notice and requests that Verizon begin good-faith negotiations, under Section 252 of the 1996 Telecom Act, to reach a mutually agreeable amendment to the Agreements that fully and properly implements the changes in law that have occurred as a result of the *Triennial Review Remand Order*. Formal notice also is hereby being given for purposes of continuing negotiations on the rules adopted in the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*. KMC intends that the negotiations will include the effect of section 271 of the 1996 Telecom Act, where applicable, on Verizon's

Mr. Jeffrey A. Masoner
Verizon Wholesale Markets
March 30, 2005
Page Two

ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

KMC notes that, pursuant to the Agreements and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the Agreements continue in effect until such time as the Agreements are formally amended by the parties. As such, KMC expects that both it and Verizon will continue to honor all terms and conditions of the Agreements until such time as the parties execute a written amendment to the Agreements.

KMC's main contact for these negotiations is:

Marva Brown Johnson
KMC Telecom, Inc.
1755 North Brown Road
Lawrenceville, GA 30043
985-6220 (Telephone)
(678) 985-6613 (facsimile)
mabrow@kmctelecom.com

Copies of all correspondence related to parties' negotiations should be provided
to:

Genevieve Morelli
Brett Heather Freedson
KELLEY DRYE & WARREN LLP
1200 Nineteen Street, N.W.
Suite 500
Washington, D.C. 20036
(202) 955-9600 (telephone)
(202) 955-9792 (facsimile)
gmorelli@kelleydrye.com
bfreedson@kelleydrye.com

Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process. On behalf of KMC, the negotiations will be handled by KMC's counsel at the law firm of Kelley Drye & Warren LLP.

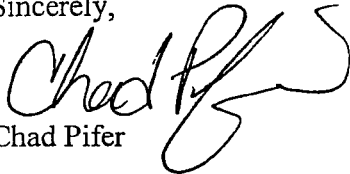
Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised Agreements, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and

Mr. Jeffrey A. Masoner
Verizon Wholesale Markets
March 30, 2005
Page Three

verified. Accordingly, KMC hereby requests that Verizon provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators, by end office, for each end office that Verizon claims fall within each tier, as those tiers are defined in the *Triennial Review Remand Order*.

Please feel free to contact the undersigned at if you have any questions or require further information.

Sincerely,

A handwritten signature in black ink, appearing to read "Chad Pifer", with a stylized flourish at the end.

Chad Pifer

cc: Anthony M. Black

Talk America, Inc. (“Talk America”)

1. The interconnection agreement between Talk America, Inc. and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 4.6, requires that the parties negotiate in good faith a written interconnection agreement amendment to implement any changes in Applicable Law that materially affect any material provision of the Agreement, or the rights and obligations of the parties under the Agreement. Specifically, the Agreement states, in relevant part:

If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. Either party may initiate such good faith negotiations in writing upon the issuance of any relevant decision, order, determination or action, or any change in Applicable Law. (§ 4.6)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* constitute a change in Applicable Law that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate the terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and execute a formal, written amendment that properly incorporates changes to the FCC’s unbundling rules thereunder. Talk America does not agree with Verizon’s previously stated position that the unbundling determinations made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminate Verizon’s existing obligations to provide to Talk America certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated under Applicable Law, including without limitation, section 271 of the Act, to provide to Talk America the same network elements currently available under the Agreement.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute a change in Applicable Law under § 4.6 of the Agreement. By letter dated February 16, 2005, Talk America provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between Z-Tel and Verizon; or, (b) the date one (1) year after the proposed date of termination.

- 2.4 If either Z-Tel or Verizon provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither Z-Tel nor Verizon has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or SGAT.

3. Glossary and Attachments

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment
Resale Attachment
UNE Attachment
911 Attachment
Pricing Attachment

4. Applicable Law

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the Commonwealth of Massachusetts, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.
- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable

revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.

- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. Either party may initiate such good faith negotiations in writing upon the issuance of any relevant decision, order, determination or action, or any change in Applicable Law. If the Parties have been unable to negotiate an amendment to this Agreement within forty-five (45) days of the date of the initiating Party's written notice, either party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.
- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Verizon is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to Z-Tel hereunder, then Verizon may discontinue the provision of any such Service, payment or benefit, and Z-Tel shall reimburse Verizon for any payment previously made by Verizon to Z-Tel that was not required by Applicable Law. Verizon will provide thirty (30) days prior written notice to Z-Tel of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply.

5. Assignment

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Provided however, that either Party may assign this Agreement in its entirety to an affiliate of such Party upon written notice to the other Party. All obligations and duties of any Party under this Agreement shall be binding on all successors in interest and assigns of such Party. No assignments or delegations hereof shall relieve the assignor of its obligations under this Agreement. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

6. Assurance of Payment

- 6.1 Upon request by Verizon, Z-Tel shall provide to Verizon adequate assurance of payment of amounts due (or to become due) to Verizon hereunder.
- 6.2 Assurance of payment of charges may be requested by Verizon if Z-Tel (a) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, does not have established credit with Verizon, (b) in Verizon's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, (c) fails to timely pay a bill rendered to Z-Tel



Alan Kirk
Vice President, Network Vendor Management

12020 Sunrise Valley Drive
Suite 250
Reston, VA 32020
Direct Dial: (703) 391-7567
Fax: (703) -7525

February 16, 2005

Jeff Carr
Account Manager
Verizon
500 East Carpenter Freeway
Irving, TX 75062

Re: Request that Verizon engage in good faith negotiations with Talk America pursuant to Section 252 of the Telecommunications Act of 1996 and General Terms and Conditions, Section 27.4, of the Interconnection Agreement between Talk America and Verizon

Dear Jeff:

On February 4, 2005, the FCC released the text of its Order on Remand in *the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between Talk America Inc. and Verizon. Pursuant to Section 27.4 of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order* and prior FCC unbundling orders.

Accordingly, we hereby provide this notice, and request that Verizon begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. Formal notice also is hereby being given for purposes of commencing negotiations on the rules adopted in the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*. We intend that the negotiations will

include the effect of section 271 of the 1996 Telecom Act on Verizon's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

Talk America notes that, pursuant to Section 27.4 of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, Talk America expects that both it and Verizon will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Alan Kirk
12020 Sunrise Valley Drive Suite 250
Reston, VA 20191
Vice-President – Network Vendor Management
703-391-7567
akirk@talk.com

Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, Talk America hereby requests that Verizon provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that Verizon claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than March 1, 2005.

Sincerely,

Alan Kirk
Vice-President – Network Vendor Management
Talk America Inc.

cc: Michelle Miller, Verizon
Craig Pizer, Esq., Talk America
Page Miller, Talk America

XO Communications Services, Inc. (“XO”)

1. The interconnection agreement between XO Communications Services, Inc. (formerly XO Massachusetts, Inc. and Allegiance Telecom of Massachusetts, Inc.) and Verizon for the Commonwealth of Massachusetts (the “Agreement”), at § 8.3, requires that the parties renegotiate, in good faith, mutually acceptable new terms and conditions, as necessary to implement an effective legislative, regulatory, judicial or other legal action that materially affects any material term of the Agreement. Specifically, the Agreement states:

In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of [XO] or [Verizon] to perform any material terms of this Agreement, [XO] or [Verizon] may, on thirty (30) days written notice (delivered not later than 30 days following the date on which such action has become legally binding or otherwise has become legally effective) require that such terms be renegotiated, and the parties shall renegotiate in good faith such mutually acceptable new terms as may be required. (§ 8.3)

Under the Agreement, the changes to the FCC’s unbundling rules arising under the *Triennial Review Order* and the *Triennial Review Remand Order* each constitute a “regulatory action” that materially affects the parties’ agreed-upon rights and obligations under the Agreement. Thus, the Agreement requires that the parties renegotiate, in good faith, the rates, terms and conditions impacted by the *Triennial Review Order* and the *Triennial Review Remand Order*, and settle upon mutually acceptable new terms and conditions that properly incorporate changes to the FCC’s unbundling rules thereunder.

The Agreement, at § 8.2, also includes a provision that addresses specifically the parties’ obligations to negotiate, in good faith, substitute contract provisions that conform to FCC rules, regulations or orders that “materially reduce or alter” the network elements and services that Verizon is obligated to provide under applicable statutes and regulations, including the Act and or the FCC’s rules. Specifically, the Agreement states, in relevant part:

In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by the statute or regulations embodied in this Agreement, the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations and orders. (§ 8.2)

As an initial matter, XO does not agree that any determination made by the FCC, under the *Triennial Review Order* or the *Triennial Review Remand Order*, eliminates Verizon’s existing obligation to provide to XO certain network elements that Verizon currently makes available under section 251(c)(3) of the Act. Rather, Verizon remains obligated,

under section 271 of the Act and other Applicable Law, to provide to XO the same network elements currently available under the Agreement. Moreover, even if Verizon were entitled, under federal, to discontinue its provision of any network element currently available under the Agreement (and it is not), the above-referenced provision makes clear that Verizon must negotiate, in good faith, “substitute contract terms” that reduce or alter Verizon’s existing unbundling obligations, in accordance with federal law.

2. The changes to the FCC’s unbundling rules arising under the *Triennial Review Order* (effective October 2, 2003) and the *Triennial Review Remand Order* (effective March 11, 2005) constitute legally effective actions, under §§ 8.2 and 8.3 of the Agreement, for which renegotiated or substitute contract provisions are required. By letter dated February 18, 2005, XO provided formal written notice to Verizon that a “change of law” occurred, and accordingly, requested interconnection amendment negotiations to implement the *Triennial Review Remand Order*, and continuing negotiations to implement portions of the *Triennial Review Order* that were unaffected by subsequent FCC and judicial actions.

**XO Communications, Inc.
XO Massachusetts, Inc.**

SECTION 7 CHARGES AND PAYMENT

7.1 In consideration of the services provided by a Party under this Agreement, the other Party shall pay the charges set forth in Attachment I. The billing and payment procedures for charges incurred by a Party hereunder, including disputed amounts, are set forth in Attachment VIII.

SECTION 8 REGULATORY APPROVAL

8.1 This Agreement, and any amendment or modification hereof, will be submitted to the Department for approval in accordance with Section 252 of the Act. In the event any governmental authority or agency rejects any provision hereof, the Parties shall negotiate promptly and in good faith such revisions as may reasonably be required to achieve approval.

8.2 In the event the FCC or the Department promulgates rules or regulations, or issues orders, or a court of competent jurisdiction issues orders, which make unlawful any provision of this Agreement, or which materially reduce or alter the services required by statute or regulations and embodied in this Agreement, then the Parties shall negotiate promptly and in good faith in order to amend the Agreement to substitute contract provisions which conform to such rules, regulations or orders. In the event the Parties cannot agree on an amendment within thirty (30) days after the date any such rules, regulations or orders become effective, then the Parties shall resolve their dispute under the applicable procedures set forth in Section 16 (Dispute Resolution Procedures) hereof.

8.3 In the event that any legally effective legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of MCIIm or BA to perform any material terms of this Agreement, MCIIm or BA may, on thirty (30) days written notice (delivered not later than thirty (30) days following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

8.4 The Parties intend that any additional services requested by either Party relating to the subject matter of this Agreement that are not offered hereunder will be incorporated into this Agreement by amendment upon agreement by the Parties.

8.5 The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC. Subject to the Parties' rights to challenge the Agreement as permitted by applicable law, the Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of

following the date on which such action has become legally binding or has otherwise become legally effective) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required.

8.4 The Parties intend that any additional services requested by either Party relating to the subject matter of this Agreement that are not offered hereunder will be incorporated into this Agreement by amendment upon agreement by the Parties.

8.5 The Parties understand and agree that this Agreement will be filed with the Department and may thereafter be filed with the FCC. Subject to the Parties' rights to challenge the Agreement as permitted by applicable law, the Parties covenant and agree that this Agreement is satisfactory to them as an agreement under Section 251 of the Act. Each Party covenants and agrees to fully support approval of this Agreement by the Department or the FCC under Section 252 of the Act without modification. The Parties, however, reserve the right to seek regulatory relief and otherwise seek redress from each other regarding performance and implementation of this Agreement. In the event the Department or FCC rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s); provided that such rejected portion(s) shall not affect the validity of the remainder of this Agreement.

8.6 The Parties acknowledge that the terms of this Agreement were established pursuant to an order of the Department. Any or all of the terms of this Agreement may be altered or abrogated by a successful challenge to the Agreement (or to the order approving the Agreement) as permitted by applicable law. By signing this Agreement, the Parties do not waive their right to pursue such a challenge.

SECTION 9 INDEMNIFICATION

9.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever, including, but not limited to, costs and attorneys' fees (collectively, a "Loss") incurred by the indemnified Party to the extent that such Loss is: (a) suffered, made, instituted, or asserted by any other person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent legally caused by the acts or omissions of the indemnifying Party, regardless of the form of action; or (b) suffered, made, instituted, or asserted by the indemnifying Party's own customer(s) against the indemnified Party arising out of the indemnified Party's provision of services to the indemnifying Party under this

February 18, 2005

VIA OVERNIGHT MAIL

Director – Contract Performance and
Administration
Verizon Wholesale Markets
600 Hidden Ridge – HQEWMNOTICES
Irving, Texas 75038

Vice President and Associate General
Counsel – Wholesale Markets
Verizon Wholesale Markets
1515 N. Court House Road, Suite 500
Arlington, Virginia 22201

On February 4, 2005, the Federal Communications Commission ("FCC") released the text of its Order on Remand in *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338 ("*Triennial Review Remand Order*"). The rules adopted in the *Triennial Review Remand Order* constitute a change in law under the current interconnection agreement ("ICA") between XO¹ and Verizon Massachusetts Inc., f/k/a Bell Atlantic – Massachusetts, Inc. ("Verizon"). Pursuant to Section 8.2 of that ICA, formal written notice is required to begin the process of entering into negotiations to arrive at an amendment to implement into the ICA the FCC's determinations in the *Triennial Review Remand Order*.

Accordingly, we hereby provide this notice, and request that Verizon begin good-faith negotiations under Section 252 of the 1996 Telecom Act directed toward reaching a mutually agreeable ICA amendment that fully and properly implements the changes that have occurred as a result of the *Triennial Review Remand Order*. In addition, formal notice is hereby being given for purposes of again commencing negotiations on the changes in law implemented by the *Triennial Review Order* that were unaffected by the *Triennial Review Remand Order*.² We intend that the negotiations will include the effect of section 271 of the 1996 Telecom Act on

¹ "XO," for purposes of this notice, refers to XO Communications Services, Inc., on behalf of and/or as successor in interest to XO Massachusetts, Inc and Allegiance Telecom of Massachusetts, Inc.

² The inclusion of changes in law implemented by the *Triennial Review Order* in this request should not be construed as a waiver of any right XO may have, and XO hereby reserves all such rights, XO hereby reserves all such rights to continue to arbitrate the *Triennial Review Order* before the state commission or otherwise to seek immediate relief for Verizon's continued refusal, after months of negotiation between the parties, to implement those provisions of the *Triennial Review Order* not affected by appeal or vacatur.

Verizon's ongoing obligation to provide access to certain unbundled network elements, as well as independent state authority to order unbundling.

XO notes that, pursuant to Section 8.2 of the current ICA and paragraph 233 of the *Triennial Review Remand Order*, the existing terms of the parties' ICA continue in effect until such time as the Parties have executed a written amendment to the ICA. As such, XO expects that both it and Verizon will continue to honor all terms and conditions of the current interconnection agreement until such time as a written amendment is executed.

The main company contact for these negotiations is:

Gegi Leeger
Director Regulatory Contracts
11111 Sunset Hills Road
Reston, VA 20190
703-547-2109 voice
703-547-2300 facsimile
Email: gegi.leeger@xo.com

Please initiate the internal processes within Verizon that will facilitate this request, and respond to this letter as expeditiously as possible with written acknowledgement of your receipt so that we may begin the negotiation process.

Further, in order to timely incorporate the *Triennial Review Remand Order's* rules into our revised interconnection agreement, the wire centers in your operating areas that satisfy the Tier 1, Tier 2, and Tier 3 criteria for dedicated transport and DS1 and DS3 loops must be identified and verified. Accordingly, XO hereby requests that Verizon provide all backup data necessary to verify the number of lines and the identity of the fiber-based collocators by end office for each end office that Verizon claims fall within each tier as those tiers are defined in the *Triennial Review Remand Order*. This data should be provided by no later than Friday, February 25, 2005.

Sincerely,

Gegi Leeger
Director Regulatory Contracts